

DOCKET FILE COPY ORIGINAL
ORIGINAL
RECEIVED
APR 2 1997
Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996:)
)
Accounting Safeguards Under the)
Telecommunications Act of 1996)

CC Docket No. 96-150

JOINT OPPOSITION OF BELL ATLANTIC¹ AND NYNEX²

I. Introduction and Summary

The Commission should deny MCI's proposal to apply a more stringent rule for valuing transactions between a Bell operating company ("BOC") and its long distance and manufacturing affiliate or affiliates. The 1996 Act already subjects such transactions to public disclosure and audits, and MCI's petition would amount to expensive overkill with no public benefit. APCC's request to change the accounting for transactions between a BOC and its payphone operations is both procedurally and substantively flawed, because the same issue has

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

² The NYNEX Telephone Companies ("NYNEX") are New York Telephone Company and New England Telephone and Telegraph Company.

already been the subject of an unsuccessful APCC reconsideration petition and is now pending on appeal. In addition, the Commission should deny Cox's petition asking for unspecified additional rules to prevent cost-shifting. The Commission's existing rules fully protect against cross-subsidization.

On the other hand, the Commission should adopt the recommendations of several parties for changes that will more efficiently carry out the intent of the Commission and Congress to put into place accounting safeguards to implement the 1996 Act. Contrary to the arguments of GTE, however, these changes should apply equally to the BOCs and independent telephone companies.

II. The Commission Should Not Change Its Finding That the "50% Rule" Is Inapplicable For Transactions With Section 272 Affiliates.

MCI asks the Commission to value transactions between a BOC and its long distance and manufacturing affiliate or affiliates at "prevailing price" only if more than 50% of the sales of an asset or service are to nonaffiliates.³ MCI argues that nonaffiliates will not use most services that the BOC provides to the affiliate, and, therefore, there will be no marketplace check on cross-subsidization.⁴ The Commission, however, appropriately found that the provisions in the Act that require all facilities, services, and information that the BOC provides to the long distance affiliate be made available to competitors at the same rates⁵ protect against

³ MCI Petition for Reconsideration. The "50% rule" applies to most other affiliate transactions.

⁴ *Id.* at 3.

⁵ 47 U.S.C. §§ 272(c)(1), 272(e).

cross-subsidization,⁶ because the *right* of a nonaffiliate to take the service at the same rate will keep the BOC from underpricing the service. The Commission, therefore, quite reasonably established a rebuttable presumption that such transactions represent prevailing company prices.⁷

The Act contains other provisions that will also help ensure that transactions between a BOC and its long distance affiliate are properly valued. First, all such transactions must be reduced to writing and available for public inspection.⁸ This will give all parties an immediate opportunity to review every transaction and provide any information that would rebut the presumption that it is at the prevailing price. Second, the Act requires a biennial audit to determine if the BOC has complied with Section 272 and applicable Commission regulations.⁹ Part of that audit will be a review of transactions to ascertain whether they are properly valued.

The Commission properly found that these additional protections make it unnecessary to apply the “50% rule” to BOC transactions with its long distance and manufacturing affiliate or affiliates. Accordingly, MCI’s petition should be denied.

⁶ *Report and Order*, FCC 96-490 at ¶ 137 (rel. Dec. 24, 1996) (“Order”).

⁷ *Id.*

⁸ 47 U.S.C. § 272(b)(5). The Commission has required such notice to be placed on the BOC’s Internet home page within ten days of the transaction. Order at ¶ 122.

⁹ 47 U.S.C. § 272(d).

III. Payphone Issues Are Improperly Raised In This Proceeding.

APCC¹⁰ asks the Commission to change its decision not to require separate books of account for nonregulated payphone operations and not to apply the affiliate transaction rules to asset transfers between the BOCs and their payphone operations.¹¹ As APCC itself acknowledges, the issue of the method of valuing assets that are reclassified in BOC books of account as nonregulated payphone operations has been decided in the separate payphone proceeding.¹² The Commission previously denied a reconsideration petition that APCC filed in that proceeding that raised the same issues that it raises here,¹³ and APCC has appealed this issue.¹⁴ Nor has APCC presented any new arguments that the Commission has not already considered and rejected. The present petition is nothing more than an attempt to get a third bite at the same issue and should be dismissed.

¹⁰ Petition for Partial Reconsideration of the American Public Communications Council ("APCC").

¹¹ Order at ¶ 100.

¹² APCC at 2, citing *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order*, CC Docket No. 96-128, FCC 96-388, ¶¶ 161-71 (rel. Sep. 20, 1996).

¹³ *Order on Reconsideration*, FCC 96-439 (rel. Nov. 8, 1996).

¹⁴ *See* Brief for Petitioners, *Illinois Public Telecommunication Ass'n v. FCC*, (D.C. Cir., No. 96-1394) (filed Feb. 14, 1997).

IV. Proposals To Streamline Accounting Requirements Should Be Adopted and Applied Equally to BOCs and Independents.

Several parties propose modifications to the accounting and exogenous cost provisions of the Order that will accomplish the Commission's policy goals in a less burdensome, more efficient manner.¹⁵ For example, exogenous treatment of cost reallocations should be limited to cases where the regulated costs were reflected in rates at the advent of price caps or where regulated use was underforecasted, as SBC urges.¹⁶ Likewise, the Commission should adopt Ameritech's proposal to treat purchases by a service affiliate from a BOC the same way as purchases by a BOC from such an affiliate, i.e., at fully distributed costs, because the service affiliate will use the purchased goods and services to provide other services to members of its corporate family.¹⁷ In addition, the Commission should classify incidental interLATA services the same for regulatory as for accounting purposes, as SBC proposes.¹⁸ These and other proposed modifications in the three petitions will provide the Commission with the needed accounting data to prevent cross-subsidies at lower cost and should be adopted.

Contrary to GTE's position, however, in no event should the Commission adopt provisions giving disparate treatment to the BOCs and independent local exchange carriers

¹⁵ *See* Petition for Reconsideration of SBC Communications, Inc. ("SBC"), GTE's Petition for Reconsideration ("GTE"), Petition of Ameritech for Reconsideration and Clarification ("Ameritech").

¹⁶ SBC at 10-14.

¹⁷ Ameritech at 2-5.

¹⁸ SBC at 6-9.

(“LECs”).¹⁹ The policy reasons that justify streamlining the accounting rules are just as applicable to the BOCs as they are to GTE, which rivals the BOCs in size.

In addition to the accounting and exogenous cost proposals, the Commission should adopt SBC’s proposal to allow entities that are not currently required to file Form 10-K reports with the Securities and Exchange Commission to file simplified reports, including unaudited financial statements. Those reports will provide the Commission with all of the relevant information that is included on Form 10-K but with a substantially lower administrative burden.²⁰

V. Additional Rules Are Not Needed To Prevent Cost-Shifting.

Without specifying exactly what it proposes, Cox argues for additional “accounting, CPNI and joint marketing rules.”²¹ Cox assumes that despite the move to price cap regulation, LECs will violate Commission rules in order to shift costs. Cox bases its claim on the attenuated possibility that if carriers were to return to a price cap regime with earnings sharing, the risk of an unlawful shift in costs would be outweighed by the possibility that such a shift could result in the partial offset of the total amount shared. This convoluted logic has been contradicted by economic testimony in numerous dockets where NYNEX, Bell Atlantic and others have demonstrated that a price cap regulated LEC “is no more able to cross-subsidize than

¹⁹ GTE at 3-5, 21-23.

²⁰ SBC at 16-18 and Exh. A.

²¹ Cox Communications, Inc. Consolidated Petition for Reconsideration at 4 (filed Feb. 20, 1997).

an unregulated firm.”²² Indeed, when cable television companies like Cox are regulated by price caps, the Commission has not required *any* formal cost allocation, even though they could potentially return to cost-based regulation.²³ More fundamentally, Cox ignores the entire framework of section 272, which accepts the need for some separation regulations for the time being, but balances that need with the impact on the regulated company and ultimately on the consumer. Cox provides no basis for the Commission to ignore that balance and impose an additional unspecified layer of regulation on top of those imposed by the Act.

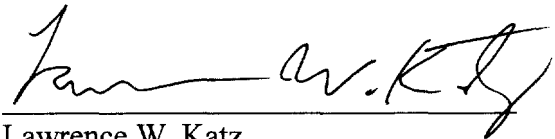
²² ***Price Cap Performance Review for Local Exchange Carriers***, CC Docket 94-1, Reply Comments of Bell Atlantic, Affidavit of Alfred E. Kahn, ¶ 27 (filed June 29, 1994). *See also, BOC Provision of Out-of-Region Interstate, Interexchange Services*, CC Docket No. 96-21, Bell Atlantic Reply Comments, Reply Affidavit of Robert W. Crandall, ¶ 8 (filed Mar. 25, 1996) (price caps “ameliorat[e] any legitimate concern over cross-subsidization”).

²³ *See* 47 C.F.R. § 76.924(a) (cost allocation rules are not applicable unless company seeks a rate adjustment based on a cost of service showing).

VI. Conclusion

Accordingly, the Commission should deny or dismiss the petitions of MCI, APCC and Cox and should adopt the modifications to its Order proposed by other parties, as discussed above.

Respectfully Submitted,

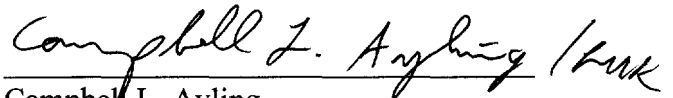


Lawrence W. Katz

Edward D. Young, III
Michael E. Glover
Of Counsel

1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-4862

Attorney for the Bell Atlantic
Telephone Companies



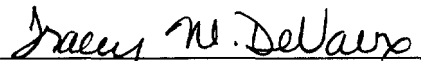
Campbell L. Ayling
1095 Avenue of the Americas
Room 3725
New York, New York 10036
(212) 395-8326

Attorney for the NYNEX
Telephone Companies

April 2, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 1997 a copy of the foregoing "Joint Opposition of Bell Atlantic and NYNEX" was sent by first class mail, postage prepaid, to the parties on the attached list.


Tracey M. DeVaux

Albert H. Kramer
Robert F. Aldrich
Dickstein, Shapiro
2101 L Street, NW
Washington, DC 20554-1526

Counsel for APCC

Jack B. Harrison
Frost & Jacobs
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202

Counsel for Cincinnati Bell Telephone
Company

Richard McKenna
GTE Service Corporation
PO Box 152092
Irving, TX 75015-2092

Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Durward D. Dupre
Mary W. Marks
Jonathan W. Royston
SBC Communications
One Bell Center
Room 3520
St. Louis, MO 63101

Alan N. Baker
Ameritech
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196

Thomas E. Taylor
Sr. Vice President-General Counsel
Cincinnati Bell Telephone Company
201 East Fourth Street
6th Floor
Cincinnati, OH 45202

Gail L. Polivy
GTE Service Corporation
1850 M Street, NW
Suite 1200
Washington, DC 20036

James D. Ellis
Robert M. Lynch
David F. Brown
175 E. Houston
Room 1254
San Antonio, TX 78205

Counsel for SBC Communications

Wendy S. Bluemling
Director-Regulatory Affairs
SNET
227 Church Street
New Haven, CT 06510

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554